

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

City of Caruthersville d/b/a)

Caruthersville Water Treatment Plant)

Docket No. CAA-07-2008-0018

Respondent)

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

This Administrative Compliance Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency, Region VII (EPA) and by the Respondent, City of Caruthersville d/b/a Caruthersville Water Treatment Plant, pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7413(a)(3)(B), as amended. This Order requires Respondent to comply with the requirements of the General Duty Clause, Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

Specifically, EPA Orders Caruthersville Water Treatment Plant to make modifications to the Third Street Plant and the Industrial Drive Plant to be in compliance with the requirements of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r)(1) to Title I of the Clean Air Act, 42 U.S.C. § 7412(r)(1), which requires the owners and operators of stationary sources to prevent the accidental release and to minimize the consequences of any release of any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3) or any other extremely hazardous substance.

2. Pursuant to Section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

3. Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), grants the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

II. Definitions

4. Section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(C) defines "stationary source" as, inter alia, any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one

or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

5. Section 112(r)(2)(A) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance, as defined below, or other extremely hazardous substance into the ambient air from a stationary source.

6. Section 112(r)(2)(B) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed pursuant to Section 112(r)(3) of the Clean Air Act. The list of substances regulated under Section 112(r) of the Clean Air Act is set forth at 40 C.F.R. § 68.130.

7. As used herein, the term “day” shall mean calendar day.

III. Factual Background

8. Respondent is the owner and/or operator of a looped water treatment plant operating at two locations: 403 West Third Street and 205 Industrial Drive (“facilities”). The facilities owned by Respondent treat the public drinking water supply for the City of Caruthersville.

9. At all times relevant to this Order, Respondent produced, processed, handled or stored chlorine at its facilities.

10. EPA inspected the Caruthersville Water Treatment Plant on October 25, 2006, to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Caruthersville Water Treatment Plant uses gaseous chlorine in the process at its facilities.

IV. Conclusions of Law

11. Respondent is a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

12. Respondent's facilities are "stationary sources" as defined by Section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(C).

13. Chlorine is a "regulated substance" as defined by Section 112(r)(2)(B) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(B), and is listed at 40 C.F.R. § 68.130.

14. Pursuant to Section 112(r)(1) of the Clean Air Act, Respondent has a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

V. Finding of Violation

15. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facilities, EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 14 above, in that, among other things, Respondent has not identified hazards which may result from accidental releases of regulated substances and has not designed and maintained a safe facility, taking such steps as are necessary to prevent releases and minimize the impacts thereof. Therefore, Respondent violated the provisions of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

VI. Compliance Order

16. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, modify the Third Street and Industrial Drive Plants, as specified below, to be in compliance with the requirements of the General Duty Clause, Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

- a) Within thirty (30) days, correct deficiencies at the Third Street Plant, including, but not limited to:
 - (i) Maintain a functional chlorine gas detection system;
 - (ii) Repair alarm light at chlorinator room door;
 - (iii) Maintain a functional ventilation system with exhaust at floor level.
- b) Within 180 days, install a security system including cameras and recording devices at the Third Street Plant.
- c) Within thirty (30) days, correct deficiencies at the Industrial Drive Plant, including, but not limited to:
 - (i) Install chlorine gas detection system;
 - (ii) Repair or replace lock on chlorine storage room door;
 - (iii) Seal floor drains in chlorine storage room;
 - (iv) Post warning signage on outside of building;
 - (v) Install corrosion-resistant electrical outlets; and
 - (vi) Maintain a functional ventilation system with exhaust at floor level.
- d) Within thirty (30) days implement administrative procedures, for both Plants including, but not limited to:
 - (i) Apply state codes and accepted industry standards for the handling and operation of the process chemical;
 - (ii) Develop and implement maintenance procedures;
 - (iii) Develop an emergency action plan and coordinate with the LEPC;
 - (iv) Keep current Material Data Safety Sheets (MSDS) for chemicals used at the facility; and
 - (v) Establish procedures for purchasing chlorine to ensure the threshold quantity of chlorine does not exceed 2,500 pounds at any one time for the facility.

17. Respondent shall, upon completion of the upgrades and modifications to the Third Street and Industrial Drive Plants, submit a Completion Report within two hundred ten (210) days of the effective date of this Order which includes the following:

- a) interior and exterior photographs of the Third Street and Industrial Drive facilities showing the items in paragraph 16 a) and b) have been completed; or
- b) an itemization of the costs of completing the modifications to the Third Street and Industrial Drive facilities; and
- c) a verification, stating that Respondent has complied with each of the requirements of this Order.

18. All documents required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. The submission required by paragraph 17 shall be made to:

Sarah Thibos LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, Kansas 66101;

and

George Hess
Chemical Risk Information Branch
United States Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

20. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

VII. Potential Liability

21. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the Clean Air Act and the regulations promulgated pursuant thereto.

22. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator is authorized to address such a violation as follows:

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c) Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

23. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of the Caruthersville Water Treatment Plant to comply with all federal, state and local statutes, regulations and permits.

24. This Order shall become effective on the date that it is signed by the Director of the Air and Waste Management Division, EPA.

25. This Order shall terminate one year from the effective date of this Order.

26. This Order is binding on the Parties signing below.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 4/15/08

RESPONDENT:
CITY OF CARUTHERSVILLE d/b/a
CARUTHERSVILLE WATER TREATMENT PLANT

By Deane Lupo

Title Mayor

Date 4/7/08

IN THE MATTER OF City of Caruthersville d/b/a Caruthersville Water Treatment Plant,
Respondent
Docket No. CAA-07-2008-0018

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

Mr. Paul Shaw
Water and Wastewater Manager
City of Caruthersville
200 West 3rd Street
Caruthersville, Missouri 63830

and

The Honorable Diane Sayre
Mayor of Caruthersville
200 West 3rd Street
Caruthersville, Missouri 63830

Dated: 4/17/08


Kathy Robinson
Hearing Clerk, Region 7